

### Regarding a pseudo-salesman.

*To the Editor:*—I have uncovered another racket, which, I believe, through the agency of CALIFORNIA AND WESTERN MEDICINE, can be met.

A man, about three weeks ago, representing himself as manager of this district, in opening up accounts to develop this territory for the "Mastercraft Tailoring Company, Inc.," Durham, North Carolina, solicited me for an order for a suit of clothes. On writing the company I have had my letter returned unclaimed. His scheme is to use an order blank of the company collecting 25 per cent, the balance C. O. D. with order.

I have an idea that this man may still be working in the county, and I would suggest your placing the information in the next issue of CALIFORNIA AND WESTERN MEDICINE, under a prominent "Warning."

This man is about medium height, light complexion, with a harsh rasping voice, going by the name of H. B. May, although he may have other aliases.

I would suggest that any of our membership encountering this man in their offices would report the matter to the police, to pick him up for investigation.

Very truly yours,

CLEON W. SYMONDS, M. D.

July 9, 1935.

### Regarding mental patients. A legal opinion by General Counsel Peart.

*Subject: Senate Bill No. 534*

C. W. Mack, M.D.,  
Livermore, California.

Dear Doctor:

Doctor Warnshuis has referred to me your inquiry addressed to him, dated June 14, 1935, concerning the constitutionality of Senate Bill No. 534 should it become law. We have carefully examined the copy of the bill, which you so kindly enclosed, and after an examination of authorities, have reached the following conclusions: It would seem that Senate Bill No. 534 does no more than restate existing principles of constitutional law. Should the bill not be signed by the Governor, the subject-matter with which it deals would continue to be the law of the land, pursuant to the constitutions of the United States and the State of California and judicial decisions thereunder.

As we understand Senate Bill No. 534, it provides first, that no person purportedly mentally deranged may be involuntarily taken to a private sanitarium without a written statement from at least one physician without financial interest in the patient's care; second, that no person mentally ill, residing in a private sanitarium, may be prevented from communicating with friends, relatives and others, except that if in the judgment of the physician in charge it is apparent that the patient is unable to express coherent thoughts, the officials of the sanitarium may prevent outside communication, but must thereafter notify the District Attorney of the county from which the patient came and the District Attorney of the county in which the sanitarium is located; and third, that no court proceedings relative to the mental condition of a patient in a private sanitarium may be had unless the patient is present in person or represented by an attorney. There is also a provision for expert medical examination by court commissioners, which is consistent with the present provisions of the Political Code concerning commitment of insane persons to State institutions.

An analysis of the provisions of the bill, bearing in mind the foregoing outline, leads one to the conclusion that it attempts to prevent involuntary detention without judicial commitment of persons mentally ill unless certain safeguards are complied with. From a legal viewpoint, the detention in a private institution of any individual without the freely given consent of that individual or without a judicial declaration by a court of competent jurisdiction providing for such detention, would seem to constitute false imprisonment. Falsely imprisoning a person is a criminal offense (Penal Code, Sections 236-237) and a civil wrong. The person

imprisoned may redress the civil wrong in an action for damages.

Furthermore, any act of the legislature purporting to authorize the detention in private institutions of persons mentally ill without any judicial procedure whatever, and without the consent of such persons, would probably be unconstitutional under both the constitutions of the United States (Amendment XIV) and the State of California (Article I, Section 1, and In re Lambert, 134 Cal. 626). Consequently, the legislature in Senate Bill No. 534 is merely regulating this subject in the only manner in which it has constitutional authority, and is only restating that which is already law.

With respect to the third requirement of the bill, namely, that the person whose mental condition is in issue at a court proceeding must be personally present or represented by an attorney, it would seem that this matter is analogous to the question before the Supreme Court of the United States in the famous Scottsboro case, which has received so much newspaper publicity in the past few years. The Supreme Court there held that any proceeding in a state court in which a person's liberty was at stake, the Constitution of the United States required that such person be furnished with an attorney at law.

Of course, it must be remembered that in rendering an opinion on the constitutionality of the bill in which you are interested, matters pertaining to the wisdom or lack of wisdom of the legislature in enacting it are not before me. I must confine myself to the questions of law involved and not undertake to pass judgment upon any of the policies involved.

I am taking the liberty of retaining the copy of Senate Bill No. 534, which you enclosed in your letter to Doctor Warnshuis. If you are caused any inconvenience thereby, I shall return it promptly.

Very truly yours,

June 27, 1935.

HARTLEY F. PEART.

### Regarding amendments to California Medical Practice Act.

*To the Secretary:*—In answer to your request of July 1, we submit the following information relative to recent legislative enactments involving changes in the Medical Practice Act.

Senate Bill No. 154, amending Section 14 of the Medical Practice Act, adding causes for issuance of citation and requiring deposit of bond by those appealing from judgment of the Board, was passed and is now before the Governor.

Senate Bill No. 155, amending Section 10 of the Medical Practice Act, re foreign graduates, sent to the Governor June 15, 1935.

Senate Bill No. 468, adding Section 18a, providing for issuance of injunctions to restrain persistent law violators, sent to the Governor June 15, 1935.

Senate Bill No. 820, amending Sections 2 and 13. Amendment to Section 2 returns the annual registration fee of the Board of Medical Examiners to \$2. This is the only change that concerns the Board of Medical Examiners. It also increases registration fee payable to the Board of Osteopathic Examiners and increases the penalty for failure to pay same. The amendment to Section 13 does not in any way change the provisions relating to the administration features of the Board of Medical Examiners, excepting that in lieu of the present one-year residence requirement of reciprocity applicants, the applicant may show two years of legal practice in some other state or states. The bill was sent to the Governor June 14, 1935.

Assembly Bill No. 2305, adding Section 9-a to the Medical Practice Act re chiroprody, sent to the Governor June 15, 1935.

Assembly Bill No. 1765, while it does not amend the Medical Practice Act, was urgently supported by the Board of Medical Examiners. It amends the corporation law in an endeavor to stop fly-by-night professional schools from issuing "degrees, diplomas or certificates." Sent to the Governor June 15, 1935.